

<b>Notice of Allowability</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/341,232	ERNST ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Fred Ferris	2128	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 3 December 2004.
2. ☒ The allowed claim(s) is/are 24 and 29-36, now renumbered as 1-9.
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☒ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☒ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☒ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date 4/24/03.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |   |   |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)           |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input type="checkbox"/> Examiner's Amendment/Comment                              |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance  |
|   | 9. <input type="checkbox"/> Other _____   |

JEAN P. HOMERE  
PRIMARY EXAMINER

### **DETAILED ACTION**

1. *This office action is responsive to applicant's amendment filed on 3 December 2004. Applicants have now cancelled claims 1-23, 25-28, and 37-45. Claims 24, and 29-36 are currently pending and have now been allowed over the prior art of record.*

### **Response to Arguments**

2. *Applicant's arguments filed 3 December 2004 with respect to claims 24, and 29-36 have been fully considered and are persuasive. The 35 USC 103(a) rejection of claims 24, and 29-36 has been withdrawn. Applicants have now cancelled claims 1-23, 25-28, and 37-45, hence the previous rejections no longer apply. Applicants have amended claims responsive to the allowable subject matter indicated in the previous office action. Accordingly, the case is now in condition for allowance.*

### **Allowable Subject Matter**

4. *Claims 24, and 29-36 are allowed over the prior art of record.*

*The following is an examiner's statement of reasons for allowance:*

*Applicants are disclosing a method for generating a network (plan) connecting users to a network inclusive of a network graph where edges represent transmission paths and territory topography & cable paths, nodes represent intersections, and by generating tree structure, with connection between node and users, and determining load of edges.*

*While these features are individually disclosed in the prior art, the prior art of record does not meet the conditions as suggested in MPEP section 2132, namely:*

*"The identical invention must be shown in as complete detail as is contained in the ... claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an **ipsissimis verbis** test, i.e., identity of terminology is not required. **In re Bond**, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990)."*

*In particular, the prior art of record does not disclose the specific sequence of steps relating to generating the network plan using the sub-steps of generating a graph representing definable paths, assigning users to the graph by closest edge, generating a tree structure by removing edges, and determining load of tree structure edges by requirements, in the context of the claims.*

*The closest prior art uncovered during examination teaches certain limitations of the claimed invention as follows:*

*U.S. Patent 5,270,919 issued to Blake et al: teaches a network planning tool that allows a user to assign network service nodes as a function of user requirements and network parameters including loading within a particular region (territory), but does not explicitly disclose the sequence of sub-steps relating to generating a graph representing definable paths, assigning users to the graph by closest edge, generating a tree structure by removing edges, and determining load of tree structure edges by requirements as now recited in independent claims 24 and 29.*

U.S. Patent 5,742,795 issued to Kussel: teaches generating a network topology in the form of a network graph that includes a network tree structure and network cable paths, but again does not explicitly disclose the sequence of sub-steps relating to generating a graph representing definable paths, assigning users to the graph by closest edge, generating a tree structure by removing edges, and determining load of tree structure edges by requirements as now recited in independent claims 24 and 29.

U.S. Patent 4,847,788 issued to Shimada: teaches the use of intersecting map data in determining and representing the intersection of street (road) segments, but also does not explicitly disclose the sequence of sub-steps relating to generating a graph representing definable paths, assigning users to the graph by closest edge, generating a tree structure by removing edges, and determining load of tree structure edges by requirements as now recited in independent claims 24 and 29.

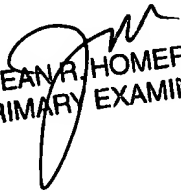
The features noted above relating to the specific sequence of method steps for generating a network plan as now recited in independent claims 24 and 29 renders the claimed invention non-obvious over the prior art of record. Claims 29-36 are deemed allowable as being dependent from independent claim 29.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

**Conclusion**

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fred Ferris whose telephone number is 571-272-3778 and whose normal working hours are 8:30am to 5:00pm Monday to Friday. Any inquiry of a general nature relating to the status of this application should be directed to the group receptionist whose telephone number is 571-272-3700. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jean Homere can be reached at 571-272-3780. The Official Fax Number is: (703) 872-9306

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March 19, 2005

  
JEAN R. HOMERE  
PRIMARY EXAMINER